

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

PEGGY L. EDWARDS,

Plaintiff

v.

Civil Action No.: 2:04-1179

JO ANNE BARNHART,  
Commissioner of  
Social Security,

Defendant

MEMORANDUM OPINION AND ORDER

This matter is before the court pursuant to Rule 72(b) of the Federal Rules of Civil Procedure on plaintiff's objections to the proposed Findings and Recommendation of United States Magistrate Judge Mary E. Stanley, entered November 1, 2005.

I.

In conducting its de novo review, the court does not recite the comprehensive factual and procedural background assembled by the magistrate judge. The proposed findings and recommendation are supplemented only where necessary.

Plaintiff Peggy L. Edwards, approximately 55 years old, filed her application for disability insurance benefits on April

4, 2003, alleging disability as of June 30, 1999, due to back and knee pain and stomach ailments. A hearing was conducted on plaintiff's claim on May 25, 2004, subsequent to which the administrative law judge ("ALJ") issued a decision dated June 25, 2004, finding that plaintiff was not entitled to benefits. The decision became final on September 9, 2004, after the Appeals Council denied plaintiff's request for review.

On November 1, 2004, plaintiff instituted this action seeking judicial review of the administrative decision pursuant to 42 U.S.C.A. § 405(g). The sole issue before the court is whether the final decision of the Commissioner of the Social Security Administration ("Commissioner") denying plaintiff's claim for benefits is supported by substantial evidence. See 45 U.S.C.A. § 405(g); Craig v. Chater, 76 F.3d 585, 589 (4th Cir. 1996). The magistrate judge, in her findings and recommendation, concluded that the ALJ's decision was supported by substantial evidence, and recommended that the Commissioner's decision denying plaintiff benefits be affirmed.

Plaintiff filed her objections on November 14, 2005, contending (1) the ALJ failed to find certain impairments severe, (2) her subjective pain complaints should have been fully credited, and (3) the hypothetical question crafted by the ALJ failed to include a comprehensive description of her impairments.

## II.

### A. The Severity of Plaintiff's Alleged Impairments

Plaintiff contends the ALJ erred in not treating as severe impairments her knee and bladder problems, abdominal hernia, blood pressure, and mood disorder.<sup>1</sup> The Supreme Court recently observed, consistent with the governing regulations, that a severe impairment is "any impairment or combination of impairments which significantly limit[] [the claimant's] physical or mental ability to do basic work activities." Barnhart v. Thomas, 540 U.S. 20, 24 (2003) (emphasis added).

Regarding her knee problems, the ALJ noted plaintiff's surgery in 1993 and her treating physician's observation, just one week later, that it "was healing nicely." (Admin. Rec. at 16). After that initial visit following surgery, plaintiff skipped her remaining follow-up appointments. Ten years later, plaintiff was evaluated by Nilima Bhirud, M.D. During that

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<sup>1</sup>In one brief paragraph, plaintiff similarly faults the ALJ for not treating her skin and bowel conditions as severe impairments. The three sentences plaintiff offers to counter the finding are, however, an insufficient basis upon which to reverse the determination.

evaluation, Dr. Bhirud noted some tenderness in the knees, but further noted plaintiff had normal range of motion, no swelling, and a normal gait.

Next, the ALJ observed that Dr. Bhirud found a large abdominal hernia in plaintiff's upper abdomen on June 25, 2003. Plaintiff previously had hernia repair surgery in 1997. Her treating physician offered his post-operative observation that plaintiff presented no further, major complaints at the time. The ALJ noted additionally that, since March 2001, no medical records showed complaints or treatment for the condition.

Regarding her hypertension, the ALJ appears to have closely examined plaintiff's medical records and the results of her blood pressure testing from December 3, 2001, through October 14, 2003. His conclusion, fully supported by the record, was that her condition is controlled with medication.

Regarding plaintiff's mood disorder, the magistrate judge correctly observed plaintiff's self-reported information, as recounted by the ALJ, that she has never been treated for a mental condition nor prescribed psychotropic medications. Further, the ALJ reduced plaintiff's capacity to take account of the need for simple, repetitive, and unskilled work.

Regarding plaintiff's bladder condition, the ALJ made two significant findings. First, the ALJ noted Dr. Bhirud's statement in her July 8, 2003, report that plaintiff "denies any urinary problems." (Admin. Rec. at 191). Second, the ALJ stated as follows:

The claimant alleges disability in part because of bladder problems. On November 20, 2001, Dr. Jeffrey diagnosed urinary tract infection. (Exhibit 5F, page 7). On October 4, 2003, Dr. Jeffrey indicated that Ms. Edwards had recurrent urinary tract infection. (Exhibit 18F, page 5). At the hearing Ms. Edwards testified that she used a catheter to empty her bladder. The record shows that Dr. Jeffrey prescribed French catheter for the claimant as a result of urinary incontinence. (Exhibit 13F). Accordingly, it appears this is a medically determinable impairment. However, the undersigned finds the condition is managed and has not resulted in any significant limitation in her ability to do basic work activities; and its, therefore, a non-severe impairment (20 C.F.R. 404.1521 and SSR 96-3p).

(Admin. Rec. at 17) (emphasis added).

Although plaintiff testified that she is required to catheterize herself between four to seven times per day, requiring 15 to 20 minutes on each occasion, there is little to suggest that this condition satisfies the regulatory definition.

Inasmuch as none of the foregoing conditions have been shown to rise to the level of a severe impairment, alone or in combination, that significantly limits plaintiff's physical or mental ability to do basic work activities, the ALJ did not err.

**B. Plaintiff's Subjective Pain Complaints**

Plaintiff contends her hearing testimony should have been fully credited by the ALJ. Specifically, plaintiff asserts the ALJ (1) improperly penalized her for receiving unemployment compensation following the onset date, (2) erroneously found she endured the hearing without distress, although counsel noted for the record his client was shifting and changing positions to deal with her pain, and (3) failed to specify the inconsistencies in her testimony concerning her daily living activities.

As noted by the magistrate judge, the ALJ made the pain findings required by the regulations and governing authority. Further, in answer to plaintiff's dissatisfaction with the credibility findings, the magistrate judge has responded appropriately, and at length, to each concern. There is, accordingly, no basis to disturb the ALJ's pain and credibility findings.

**C. The Hypothetical Question**

Plaintiff contends that the hypothetical question

propounded by the ALJ did not include a comprehensive listing of her impairments. Plaintiff faults the ALJ for, inter alia, not including (1) her concentration problems, frequent breaks to accommodate her bowel and urinary conditions, and her asserted moderate to severe pain, and (2) a sit/stand option.

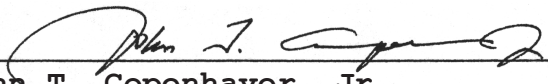
As correctly observed by the magistrate judge, a hypothetical question may properly omit non-severe impairments. See Benenate v. Schweiker, 719 F.2d 291, 292 (8th Cir. 1983). Taking this principle into account, along with the ALJ's credibility findings, the limitations supported by substantial evidence were included within the ALJ's hypothetical.

### III.

For the reasons stated, and having reviewed the record de novo, the court adopts and incorporates herein the magistrate judge's proposed findings and recommendation in their entirety. It is ORDERED that plaintiff's motion for judgment on the pleadings be, and it hereby is, denied; defendant's motion for judgment on the pleadings be, and it hereby is, granted; and the final decision of the Commissioner be, and it hereby is, affirmed.

The clerk is directed to forward copies of this written opinion and order to all counsel of record and the United States Magistrate Judge.

DATED: February 27, 2006

  
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John T. Copenhaver, Jr.  
United States District Judge